

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROBERT W. WELSH d/b/a BIG TEN DEVELOPMENT,	)	
	)	
	)	
Plaintiff,	)	
	)	Case No. 08 C 1342
v.	)	
	)	Judge Joan B. Gottschall
BIG TEN CONFERENCE, INC., and	)	Magistrate Judge Susan E. Cox
BIG TEN NETWORK SERVICES, L.L.C.,	)	
	)	
Defendant.	)	

**DEFENDANT BIG TEN CONFERENCE, INC.'S RULE 12(b)(6) MOTION TO DISMISS  
AND REQUEST FOR ATTORNEYS' FEES PURSUANT TO 15 U.S.C. § 1117**

Defendant Big Ten Conference, Inc. (the "Conference"), through its attorneys, moves this Court to dismiss Plaintiff Robert Welsh's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for attorneys' fees pursuant to 15 U.S.C. § 1117.

As explained in the Conference's supporting memorandum of law, the only federal cause of action alleged in Welsh's five-count Complaint is a frivolous Lanham Act claim (Count V) for alleged fraudulent procurement of the "Big Ten Network" trademark. Welsh has no trademark rights in the Big Ten Network, however, because he has not alleged (and cannot allege) that he ever used the mark in commerce or sought to register any marks at the U.S. Patent & Trademark Office. In fact, the Conference, not Welsh, first used the "Big Ten Network" mark in commerce and filed unopposed trademark applications for the mark. Moreover, Welsh claims "ownership" rights in a mark incorporating "Big Ten," in which the Conference holds long-established and incontestable trademark rights related to intercollegiate athletics. Thus, this is a textbook example of an "exceptional case" under the Lanham Act in which the Court should order Welsh to pay the Conference its attorneys' fees and costs.

Welsh's remaining Counts are based on state law and include claims for breach of an implied-in-fact contract (Count I), misappropriation of trade secrets (Count II), unjust enrichment (Count III) and "misappropriation and conversion of trade and service mark assets" (Count IV). The Conference's accompanying memorandum establishes that each of those

theories also fails to state a claim. Accordingly, this Court should dismiss the state law claims under Rule 12(b)(6), either in conjunction with the Complaint as a whole or in the unlikely event that Count V somehow survives this motion to dismiss.

Respectfully submitted,

THE BIG TEN CONFERENCE, INC.

Dated: April 7, 2008

By: /s/Andrew S. Rosenman  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on April 7, 2008, copies of the foregoing Defendant Big Ten Conference, Inc.'s Rule 12(b)(6) Motion to Dismiss and Request for Attorney Fees Pursuant to 15 U.S.C. § 1117, and this Certificate of Service were caused to be served upon the following:

Robert P. Cummins  
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via the Electronic Filing System of the U.S. District Court for the Northern District of Illinois.

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